

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CHRISTINE LITTLE

Plaintiff,

V.

INMODE, LTD., INMODE MD, LTD.,
and INVASIX, INC.,

Defendants.

CIVIL ACTION NO. 4-23-CV-00332-ALM

DEFENDANT INVASIX INC.'S FIRST AMENDED DISCLOSURES

Defendant Invasix, Inc. (“Invasix”), by and through its attorneys, Claire Parsons of Wilson Elser Moskowitz Edelman & Dicker, and Angela L. Angotti and Paige L. Cheung of BOWMAN AND BROOKE LLP, hereby submits its first amended disclosures pursuant to Rule 26(a)(1)(A) of the Federal Rules of Civil Procedures.

By making the following amended disclosures, Invasix does not represent that it is identifying every witness or document possibly relevant to this action. Invasix reserves the right to object to discovery on the basis of privilege, work product, relevance, undue burden, or any other valid objections, or to object to any other discovery request or proceeding which involves or relates to the subject matter of these disclosures. Invasix also does not waive its right to object to the admission at trial of any document, tangible thing, or related testimony under the Federal Rules of Evidence. Invasix reserves the right to call any witness or present any exhibit or item at trial not listed but determined through discovery or investigation to be relevant to the subject matter of this action. These initial disclosures represent Invasix's good faith effort to identify individuals or information that it is aware of at this time to support its defenses.

At this time, Invasix's Rule 12(b)(6) Motion to Dismiss Plaintiff's First Amended Complaint is currently pending in front of the Court. Accordingly, it is not known what claims, if any, will remain after the Court's ruling. Further, Invasix has not yet filed its Answer, and its discovery, investigation, and preparation for trial are ongoing. Invasix reserves the right to amend, supplement, or revise its disclosures as provided in Rule 26(e)—either through express supplements or through responses to formal discovery responses—after the Court's ruling on the pending Motion, or as Plaintiff provides additional information further disclosing the nature of her allegations, amends her pleadings, or otherwise. All of the disclosures set forth below are made subject to the above qualifications and reservations of rights.

A. The Correct Names of the Parties to the Action:

Pursuant to the Order Governing Proceedings (Dkt. #22, p. 4) and based on the pleadings on file, Invasix understands the correct party names to be:

Plaintiff: Christine Little

Defendants: Invasix, Inc.
InMode Ltd.
InMode MD Ltd.

B. The Name, Address, and Telephone Number of Any Potential Parties to the Action:

Pursuant to the Order Governing Proceedings (Dkt. #22, p. 4) and based upon information and belief, Le Beau Visage Medical Spa, LLC, Jason M. Riehs, MD, and Dedra Gleason are known to Invasix as participating in the event described in Plaintiff's First Amended Complaint. Invasix does not have the address or phone number of the above individuals, and the address and phone number of Le Beau Visage is already known to Plaintiff and equally available to Plaintiff at this link: <https://lebeauvisagemedicalspa.com/>.

C. Individuals Likely to Have Discoverable Information that Invasix May Use to Support its Defenses:

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i), Local Rule CV-26(d), and the requirements set forth by the Order Governing Proceedings (Dkt. #22), Invasix identifies the following individuals who are likely to have discoverable information relating to the issues, a brief characterization of their connection to the case, and a fair summary of the substance of the information known by such person:

RESPONSE:

1. Plaintiff Christine Little

c/o Stephen Higdon, Michael Lyons, and Michael Fechner
LYON & SIMMONS, LLP
2101 Cedar Springs Road
Suite 1900
Dallas, Texas 75201
(214) 665-6900

Subject of Information: As the plaintiff in this matter, Ms. Little is expected to have discoverable knowledge of the incident, injuries, and damages as stated in the First Amended Complaint.

2. Corporate representative of Invasix, Inc.

c/o Claire W. Parsons
WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP
909 Fannin Street, Suite 3300
Houston, Texas 77010
(713) 353-2039
and

Angela L. Angotti and Paige L. Cheung
BOWMAN AND BROOKE LLP
2901 Via Fortuna Drive, Suite 500
Austin, Texas 78746
(512) 874-3836

Subject of Information: Invasix's corporate representative is expected to have discoverable knowledge pertaining to Plaintiff's claims regarding the Evoke in the First Amended Complaint.

3. Corporate representative of InMode Ltd.

c/o Claire W. Parsons
WILSON ELSEER MOSKOWITZ EDELMAN & DICKER, LLP
909 Fannin Street, Suite 3300
Houston, Texas 77010
(713) 353-2039
and

Angela L. Angotti and Paige L. Cheung
BOWMAN AND BROOKE LLP
2901 Via Fortuna Drive, Suite 500
Austin, Texas 78746
(512) 874-3836

Subject of Information: InMode Ltd.'s corporate representative is expected to have discoverable information pertaining to Plaintiff's claims regarding the Evoke in the First Amended Complaint and in support of InMode Ltd.'s jurisdictional arguments.

4. Corporate representative of InMode MD Ltd.

c/o Claire W. Parsons
WILSON ELSEER MOSKOWITZ EDELMAN & DICKER, LLP
909 Fannin Street, Suite 3300
Houston, Texas 77010
(713) 353-2039
and

Angela L. Angotti and Paige L. Cheung
BOWMAN AND BROOKE LLP
2901 Via Fortuna Drive, Suite 500
Austin, Texas 78746
(512) 874-3836

Subject of Information: InMode MD Ltd.'s corporate representative is expected to have discoverable information pertaining to the responses in support of InMode MD Ltd.'s and jurisdictional arguments.

5. Maureen Abdulla

c/o Claire W. Parsons
WILSON ELSEER MOSKOWITZ EDELMAN & DICKER, LLP
909 Fannin Street, Suite 3300
Houston, Texas 77010
(713) 353-2039
and

Angela L. Angotti and Paige L. Cheung
BOWMAN AND BROOKE LLP
2901 Via Fortuna Drive, Suite 500
Austin, Texas 78746
(512) 874-3836

Subject of Information: Ms. Abdulla is a clinical administrator who received the adverse event report pertaining to the incident made the basis for this lawsuit. She is expected to have discoverable information pertaining to the incident and Plaintiff's injury as alleged in the First Amended Complaint.

6. Dr. Jason M. Riehs

3685 Preston Road, Suite 129
Frisco, Texas 75034
(214) 856-8447

Subject of Information: Dr. Riehs owns the clinic where Plaintiff was treated with the Evoke device. He is expected to have discoverable information relating to the incident, the functionality of the device, Plaintiff's marketing defect claim, and Plaintiff's injury and damages as alleged in the First Amended Complaint.

7. Le Beau Visage Medical Spa, LLC

3685 Preston Road, Suite 129
Frisco, Texas 75034
(214) 856-8447

Subject of Information: As the incident took place at Le Beau Visage Medical Spa, the company is expected to have discoverable information relating to Plaintiff's claims in the First Amended Complaint pertaining to the incident, injury, and damages.

8. Dedra Gleason

3685 Preston Road, Suite 129
Frisco, Texas 75034
(214) 856-8447

Subject of Information: Upon information and belief, Ms. Gleason was the esthetician who treated Plaintiff with the Evoke device. She is expected to have discoverable information relating to the incident, Plaintiff's marketing defect claim, and Plaintiff's injury and damages as set forth in the First Amended Complaint.

9. Employees of Le Beau Visage Medical Spa, LLC

3685 Preston Road, Suite 129
Frisco, Texas 75034
(214) 856-8447

Subject of Information: As the incident took place at Le Beau Visage Medical Spa, the company's employees are expected to have discoverable information relating to Plaintiff's claims in the First Amended Complaint pertaining to the incident, injury, damages, and marketing defect claim.

10. Unknown physicians and other healthcare providers

Subject of Information: Physicians and other medical personnel who treated Plaintiff before or after the alleged events giving rise to this lawsuit may have knowledge about any prior treatments and Plaintiff's alleged injury and damages.

11. Holly Scaff

c/o Angela L. Angotti and Paige L. Cheung
BOWMAN AND BROOKE LLP
2901 Via Fortuna Drive, Suite 500
Austin, Texas 78746
(512) 874-3836

Subject of Information: Ms. Scaff is a Clinical Manager who provided post-incident training for Dr. Riehs' staff on August 4, 2021. She is expected to have discoverable information relating to Plaintiff's marketing defect claim.

12. Lori Sheffield, RN

c/o Claire W. Parsons
WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP
909 Fannin Street, Suite 3300
Houston, Texas 77010
(713) 353-2039
and

Angela L. Angotti and Paige L. Cheung
BOWMAN AND BROOKE LLP
2901 Via Fortuna Drive, Suite 500
Austin, Texas 78746
(512) 874-3836

Subject of Information: Ms. Sheffield is an Independent Training Consultant who provided training to Dr. Riehs and his staff on March 16, 2021 for the Evoke device. She is expected to have discoverable information relating to Plaintiff's marketing defect claim.

13. Miguel Lupercio

c/o Claire W. Parsons
WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP
909 Fannin Street, Suite 3300
Houston, Texas 77010
(713) 353-2039
and

Angela L. Angotti and Paige L. Cheung
BOWMAN AND BROOKE LLP
2901 Via Fortuna Drive, Suite 500
Austin, Texas 78746
(512) 874-3836

Subject of Information: Mr. Lupercio is a Senior Service Technician who conducted post-incident testing in the United States upon the Evoke device at issue in this case. He is expected to have discoverable information relating to Plaintiff's manufacturing defect claim.

14. Lance Baird

c/o Claire W. Parsons
WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP
909 Fannin Street, Suite 3300
Houston, Texas 77010
(713) 353-2039
and
Angela L. Angotti and Paige L. Cheung
BOWMAN AND BROOKE LLP
2901 Via Fortuna Drive, Suite 500
Austin, Texas 78746
(512) 874-3836

Subject of Information: Mr. Baird was a District Sales Manager at the time of the sale of the Evoke to Dr. Richs and is now a Regional Sales Director. He is expected to have discoverable knowledge regarding the sale of the Evoke to Dr. Richs.

15. Dr. Michael Kreindel

c/o Claire W. Parsons
WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP
909 Fannin Street, Suite 3300
Houston, Texas 77010
(713) 353-2039
and
Angela L. Angotti and Paige L. Cheung
BOWMAN AND BROOKE LLP
2901 Via Fortuna Drive, Suite 500
Austin, Texas 78746
(512) 874-3836

Subject of Information: Dr. Kreindel is expected to have discoverable knowledge regarding the design of the Evoke.

16. A corporate representative with knowledge regarding the design, manufacture, testing, or marketing of the Evoke device.

c/o Claire W. Parsons
WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP
909 Fannin Street, Suite 3300
Houston, Texas 77010
(713) 353-2039
and
Angela L. Angotti and Paige L. Cheung
BOWMAN AND BROOKE LLP
2901 Via Fortuna Drive, Suite 500
Austin, Texas 78746
(512) 874-3836

Subject of Information: Invasix and/or InMode LTD will designate a corporate representative who is expected to have discoverable knowledge regarding the design, manufacture, testing, or marketing of the Evoke device.

17. Any and all persons named in Plaintiff's Rule 26 Initial Disclosures and amendments thereto.

Invasix specifically reserves the right to amend, modify, or supplement this disclosure as additional facts are ascertained.

D. Documents, Electronically Stored Information, and Tangible Things:

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(ii) and the requirements set forth by the Order Governing Proceedings (Dkt. #22 p. 4), Invasix identifies the following categories of documents, data compilations, and tangible things that may be used to support Invasix's claims or defenses, other than information that would be used solely for impeachment, and that are currently in the possession, custody, or control of Invasix. Invasix has also produced documents, that may be used to support its claims or defenses. Nothing in this paragraph should be construed as an admission that any particular document, data compilation, or tangible thing identified in these Initial Disclosures is in fact relevant to the claim or defense of any party to these proceedings:

1. The Evoke device at issue in this case.

Location: Israel

2. Information and documents regarding Plaintiff's medical and billing records as they pertain to the incident, injury, and damages set forth in the First Amended Complaint.

Location: Plaintiff.

3. Information and documents regarding Plaintiff's alleged economic loss as set forth in the First Amended Complaint.

Location: Plaintiff

4. Information and documents relating to the incident at Le Beau Visage Medical Spa.

Location: Plaintiff; Dr. Riehs; Le Beau Visage Medical Spa.

Invasix also refers Plaintiff to the documents produced pursuant to these disclosures.

5. Information and documents regarding the design, manufacture, testing, and sale of the Evoke device at issue in this case to the extent necessary to oppose Plaintiff's claims in the First Amended Complaint.

Location: InMode, Ltd. has information regarding the design, manufacture, and final testing of the Evoke device at issue. Invasix has information regarding the testing done in the United States and the sale of the Evoke device at issue.

6. All documents and materials sold with the Evoke device at issue in this case at its time of purchase on or about December 30, 2020, by Dr. Riehs, including but not limited to the manual for the Evoke device.

Location: Invasix Inc.

Invasix also refers Plaintiff to the documents previously produced with Invasix's initial disclosures.

7. Any advertising/marketing materials as they pertain to the Evoke device as alleged in the First Amended Complaint.

Location: Invasix Inc; Dr. Rihs.

Invasix also refers Plaintiff to the documents previously produced with Invasix's initial disclosures.

8. Any adverse medical device reports as they pertain to the Evoke device and submitted to the Food and Drug Administration.

Location: Publicly available.

9. Documents and information relating to the results of the investigation as they pertain to the Evoke device and the incident made the basis for the lawsuit.

Location: Invasix, Inc.

Invasix also refers Plaintiff to the documents previously produced pursuant with Invasix's initial disclosures.

10. Documents and information identified by Plaintiff in her Rule 26 Initial Disclosures.

11. Documents identified through discovery in this case.

E. Damages:

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(iii), Invasix has no claim for damages against Plaintiff at this time aside from recovery of its attorneys' fees and costs. Invasix reserves the right to seek damages.

F. Insurance:

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(iv), Invasix refers Plaintiff to the declarations page previously produced with Invasix's initial disclosures.

G. Authorizations Described in Local Rule CV-34:

Not applicable to Invasix.

H. Reservation of Rights

Invasix specifically reserves the right to amend, modify, and supplement these Initial Disclosures as additional facts are ascertained, analyses made, legal research completed, expert opinions exchanged, and contentions formulated, including, but not limited to, the identification of individuals, identification of additional documents and materials if such information comes to their attention through further investigation, discovery, or otherwise.

Respectfully submitted,

/s/ Claire W. Parsons
Claire Parsons
State Bar No. 24051159
Claire.Parsons@wilsonelser.com
WILSON, ELSE, MOSKOWITZ,
EDELMAN & DICKER, LLP
909 Fannin Street, Suite 3300
Houston, Texas 77010
(713) 353-2000
(713) 785-7780 Facsimile

ANGELA L. ANGOTTI
State Bar No. 24112893
/s/ Paige L. Cheung
PAIGE L. CHEUNG
State Bar No. 24116193
BOWMAN AND BROOKE LLP
2901 Via Fortuna Drive, Suite 500
Austin, Texas 78746
(512) 874-3836
(512) 874-3801 (Fax)
angela.angotti@bowmanandbrooke.com
paige.cheung@bowmanandbrooke.com
Counsel for Defendants

CERTIFICATE OF SERVICE

I do hereby certify that on November 1, 2023, a true and correct copy of the foregoing document was served upon all known counsel of record in this cause via electronic mail in accordance with the Federal Rules of Civil Procedure and Local Rule CV-5(c).

Michael P. Lyons: mlyons@lyons-simmons.com
P. Wes Black: wblack@lyons-simmons.com
Stephen Higdon: shigdon@lyon-simmons.com
Michael S. Fechner, Jr.
mfechner@lyons-simmons.com
LYONS & SIMMONS, LLP
2101 Cedar Springs Road, Suite 1900
Dallas, Texas 75201
(214) 665-6900
(214) 665-6950 (Fax)
Counsel for Plaintiff Christine Little

/s/ Claire W. Parsons
Claire W. Parsons